

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

77-2101

SEP 23 1977

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

DOCKET NO. T -7719

77-2101

JERRY BATILORO

PETITIONER - APPELLANT

V.

UNITED STATES OF AMERICA,

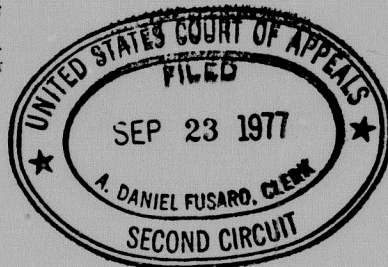
RESPONDENT - APPELLEE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF CONNECTICUT

BRIEF AND APPENDIX FOR PETITIONER - APPELLANT

FOR THE PETITIONER BY:
FRANCIS D. BURRASCANO, RESIDENT
FCI., DANBURY, CONN.

JERRY BATILORO, PRO SE
REG. NO. 80870 - 158
PEMBROKE STATION
DANBURY, CONNECTICUT 06810



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UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

JERRY BATILORO

APPELLANT,

VS

UNITED STATES OF AMERICA,

APPELLEE.

BRIEF FOR APPELLANT

FOR THE PETITIONER BY:
FRANCIS D. BURRASCANO, RESIDENT
FCI., DANBURY, CONN.

JERRY BATILORO, PRO SE
REG. NO. 80870 - 158
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FACTS PRESENTED

1. THE GOVERNMENT'S FAILURE TO GIVE PROPER MEDICAL TREATMENT TO APPELLANT DURING HIS STAY IN ADMINISTRATIVE SEGREGATION.
2. THE FEDERAL CORRECTIONAL FACILITY OF DANBURY, CONNECTICUT AS IN ESTELLE, V. GAMBLE, 429 U. S. 97 (1976), SHOWED A STANDARD OF DELIBERATE INDIFFERENCE, TO THE APPELLANT PRIOR & DURING HIS PLACEMENT INTO ADMINISTRATIVE SEGREGATION UNIT HERE AT THE FEDERAL CORRECTIONAL FACILITY, DANBURY, CONNECTICUT.

PRELIMINARY STATEMENT

THIS IS AN APPEAL FROM A JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT. (THE HONORABLE JON O. NEWMAN) RENDERED ON JULY 5, '77, AFTER APPELLANT FILED AN AFFIDAVIT, TEMPORARY RESTRAINING ORDER, ORDER TO SHOW CAUSE FOR A PRELIMINARY INJUNCTION, AND AN AFFIDAVIT IN SUPPORT OF A REQUEST TO PROCEED IN FORMA PAUPERIS. IN SAID PAPERS APPELLANT INVOKED PROVISIONS UNDER 28 U. S. C. 1331 & 1361 WITH RELIEF UNDER 28 U. S. C. 2201 & 2202, A JUDGMENT & MEMORANDUM OF DECISION ISSUED ON JULY 5, 1977, DISMISSING SAID PETITION WAS ISSUED BY THE HONORABLE JON O. NEWMAN, DISTRICT COURT JUDGE OF CONNECTICUT. FRANCIS D. BURRASCANO, A RESIDENT AT FEDERAL CORRECTIONAL FACILITY, DANBURY, CT. FILED SAID PETITION ON REQUEST FROM THE APPELLANT, ALONG WITH THIS PETITION.

STATEMENT OF FACTS

- A. ON JUNE 7, 1977, A PETITION FOR A WRIT OF HABEAS CORPUS WAS FILED BY THE APPELLANT CHARGING APPELLEE'S WITH CRUEL & UNUSUAL PUNISHMENT IN VIOLATION OF THE EIGHTH AMEND., FOR INADEQUATE TREATMENT ALONG WITH MUCH INDIFFERENCE WHEN APPELLANT REPORTED TO THE HOSPITAL TO REQUEST HIS MEDICATION BE CHANGED. THE PRESCRIPTION WAS NOT CHANGED BY THE DOCTOR WHO PRESCRIBED THE MEDICATION WHICH WAS HELPING THE APPELLANT, BUT BY TWO OTHER DOCTOR'S.
- B. ON JUNE 7, 1977, THE HOSPITAL STAFF REFUSED APPELLANT HIS REQUEST THAT HE REMAIN ON THE MEDICATION WHICH DR. ROGOL, HIS ATTENDING PHYSICIAN ORDERED.
- C. ON JUNE 7, 1977, DUE TO THE DELIBERATE INDIFFERENCE TO HIS SERIOUS MEDICAL NEEDS WHICH CONSTITUTES THE "UNNECESSARY AND WANTON INFLECTION OF PAIN," GREGG V. GEORGIA, --U.S.-- (1976), THE APPELLANT BECAME ANGRY & WORDS ONLY WERE EXCHANGED BETWEEN BOTH PARTIES.
- D. ON JUNE 7, 1977, THE DUTY LT., WAS CALLED & AT THIS TIME THE LT., REQUESTED THAT BOTH PARTIES AGREE ON THE MEDICATION TO BE TAKEN...THE DUTY LT., AT THIS TIME DID NOT WANT TO PLACE APPELLANT INTO ADMINISTRATIVE SEGREGATION..... SAID DUTY LT., DID NOT ISSUE ANY CHARGES AGAINST THE APPELLANT DURING HIS FIRST TRIP TO THE HOSPITAL AREA.
- E. ON JUNE 7, 1977, AT THIS SAME PERIOD OF TIME, APPELLANT REQUESTED THAT DOCTOR ON DUTY WHO HAD CHANGED THE MEDICATION BE CALLED AND INFORMED OF THE SAID PROBLEM. THIS REQUEST WAS ALSO DENIED. AGAIN, BEING SHOWN DELIBERATE
A
INDIFFERENCE BY HOSPITAL STAFF, &/SO CALLED VERBAL DISTURBANCE WAS CREATED.
- F. DUE TO THE SO CALLED VERBAL DISTURBANCE APPELLANT WAS PLACED IN ADMINISTRATIVE SEGREGATION & WAS CHARGED WITH INSOLENCE TOWARDS A STAFF MEMBER & DISRUPTING THE ORDERLY RUNNING OF THE INSTITUTION....
- G. FOR A PERIOD OF SIX (6) DAYS APPELLANT WAS DENIED HIS MEDICATION FROM THE HOSPITAL STAFF AS A FORM OF PUNISHMENT. THIS PUNISHMENT WAS INFLECTED WITH OUT THE DOCTORS BEING TOLD OF SAID ACTION BEING CRUEL AND UNUSUAL.....

- H. AN INSTITUTION DISCIPLINARY COMMITTEE (IDC) FOUND APPELLANT GUILTY OF INSOL-
ENCE TOWARD A STAFF MEMBER & DISRUPTING THE ORDERLY RUNNING OF THE INSTITUTION
THE (IDC) REQUIRED APPELLANT TO FORFEIT TWENTY DAYS STATUTORY GOOD TIME.
THEY ALSO RECOMMENDED APPELLANT BE RELEASE FROM ADMINISTRATIVE SEGREGATION,
WHERE HE HAD BEEN CONFINED APPROXIMATELY SIX DAYS BETWEEN THE INCIDENT AT
THE HOSPITAL & THE HEARING.....
- I. DUE TO THE DISCIPLINARY ACTION APPELLANT LOST HIS PRIVATE ROOM & HAD TO RE-
TURN TO A DORM TYPE SLEEPING QUARTERS FOR A PERIOD OF 90 DAYS, DR. ROGOL,
THE DOCTOR WHO HAD PRESCRIBED THE MEDICATION WHICH WAS CHANGED NOW REQUESTED
THAT APPELLANT BE GIVEN HIS PRIVATE ROOM BACK, THE TEAM DID NOT AGREE, FOR
IT TOOK 5 $\frac{1}{2}$ MONTHS BEFORE THE APPELLANT WAS GIVEN BACK HIS PRIVATE ROOM.
NOW WE HAVE INDIFFERENCE FROM STAFF OTHER THEN HOSPITAL STAFF.
- J. DR. ROGOL, THE APPELLANTS ATTENDING PHYSICIAN ORDERED THAT MEDICATION BE
GIVEN BACK TO THE APPELLANT WHEN HE LEARNED THAT APPELLANT WAS NOT RECEIVING
SAID MEDICATION SINCE THE PROBLEM OCCURRED ON JUNE 7, 1977. DR. ROGOL EX-
PRESSED HIS ANGRY TO THE APPELLANT ALONG WITH HIS REGRETS. DR. ROGOL IS THE
CHIEF MEDICAL OFFICER OF FCI., DANBURY, CONN.
- K. DUE TO THE DISCIPLINARY ACTION APPELLANT LOST HIS RIGHT TO A FURLOUGH FOR 90
DAYS....DURING THIS PERIOD APPELLANT WAS TO HAVE A FURLOUGH IN MARCH OF '77,
PURPOSE WAS TO TRY & CONVINCE HIS WIFE OF TEN (10) YEARS & THE MOTHER OF HIS
TWO (2) CHILDREN NOT TO FILE FOR A/DIVORCE, HE WANTED DURING THIS FURLOUGH
PERIOD TO TRY & RE-UNITE AS HUSBAND & WIFE...NOT BEING ABLE TO GO ON THIS
FURLOUGH IN MARCH OF 1977 APPELLANT'S WIFE TOOK FOR GRANTED THAT HE WAS NO-
LONGER INTERESTED IN A RE-UNION. A DIVORCE WAS GRANTED HIS WIFE IN THE MONTH
OF APRIL 1977.....FROM THE DISTRICT OF NEW YORK (BROOKLYN)

- L. WHEN APPELLANT WAS ABLE TO FILE FOR FURLOUGH HE DID & WAS NOT AWARE OF THE FACT THAT THE DIVORCE WAS GRANTED TO APPELLANT'S WIFE...ON OR ABOUT THE 3RD WEEK OF JULY 1977 APPELLANT WAS INFORMED BY MR. CURRY H IS UNIT MANAGER FROM TEAM B THAT SAID FURLOUGH WAS DENIED DUE TO THE FACT THAT HIS EXWIFE WOULD NOT WANT APPELLANT AROUND THE HOUSE OR WITH HIS CHILDREN...APPELLANT KNOWING HIS RELATIONSHIP WITH HIS EX WIFE WHEN ON HIS FURLOUGH IN DEC. of 1976 WAS VERY WEAK HAD REQUESTED THAT HE VISIT WITH HIS COUNSIN'S IN THE BROOKLYN AREA. THEN HE WOULD CALL HIS WIFE AND ASK IF HE COULD VISIT WITH HER AND THE CHILDREN. APPELLANT IN THE MONTH OF JULY 1977 WAS NOT AWARE OF THE DIVORCE UNTIL HIS TEAM MADE MENTION OF SAID FACT. ALSO, AT THIS TIME HE WAS INFORMED THAT HE COULD NOT VISIT WITH HIS CHILDREN IN THE FUTURE.
- M. APPELLANT ON JULY 22, 1977 BEING SHOCKED BY THE NEWS THAT HE WAS NO LONGER PERMITTED TO VISIT HIS CHILDREN & HIS WIFE HAD DIVORCED HIM WENT TO FATHER COYAN, THE CATHOLIC PRIEST HERE AT FCI., DANBURY, CONN.....A CALL WITH FATHER MONITORING SAID CALL WAS MADE TO HIS EX WIFE...APPELLANTS EX WIFE AGREED THAT HE COULD &(WOULD)BE ABLE TO VISIT WITH HIS CHILDREN, THAT SHE THOUGHT THE APPELLANT WAS AWARE OF ALL COURT ACTIONS & ^{SHE}WOULD INFORM MR. CURRY THAT SHE DID NOT WANT TO STOP HER HUSBAND FROM VISITING WITH THEIR CHILDREN.
- N. MR. HASSEN WAS INFORMED OF SAID CALL BY APPELLANT, MR. HASSEN REPLIED WITH, "I WANT NOTHING TO DO WITH YOUR PROBLEMS, SEE THE UNIT MANAGER." MR. HASSEN IS THE CASE WORKER OF UNIT B. APPELLANT INFORMED THE PRIEST, FATHER WENT TO SEE CASE MANAGER MR. CURRY AND TOLD HIM ABOUT THE PHONE CALL, HE ALSO TOLD MR. CURRY THAT HE HAD MONITORED SAID CALL AND THAT SHE WOULD NOTIFY THE TEAM BY PHONE THAT ^{SHE}WOULD PERMIT HER EX HUSBAND TO VISIT WITH THEIR CHILDREN. MR. CURRY WAS ALSO INFORMED BY THE CATHOLIC PRIEST THAT SHE WOULD WRITE SAID TEAM AFTER THE CALL WAS MADE ON BEHALF OF THE APPELLANT.

EVALUATION OF ALL FACTS IN ESTELLE, V. GAMBLE, 429 U. S. 97 (1976), WHICH COVERS APPELLANT'S CLAIM, DOES INDICATE THAT HE HAS BEEN DENIED HIS RIGHTS. THEREFORE, AS IN ESTELLE DELIBERATE INDIFFERENCE TO THE SERIOUS MEDICAL NEEDS OF PRISONERS AS IN THE CASE OF THE APPELLANT VIOLATES THE EIGHTH AMEND. THE LOGS KEPT BY THE FCI., HOSPITAL STAFF AND THE DUTY OFFICER OF THE SEGREGATION UNIT WILL PROVE THAT APPELLANT DID NOT RECEIVE HIS MEDICATION DURING THIS 6 DAY PERIOD....APPELLANT'S ATTENDING PHYSICIAN WAS NEVER CALLED AS TO THE PROBLEMS OVER THE MEDICATION, THE APPELLANT HAD REQUESTED DR. ROGOL BE CALLED DUE TO GREAT PAIN AND STRESS THAT VERY EVENING WHEN APPELLANT WENT ON THE EVENING PILL LINE.....A CALL TO DR. ROGOL WAS NOT MADE ON BEHALF OF APPELLANT.....APPELLANT'S ATTENDING PHYSICIAN DR. ROGOL OR DR. SMITH WERE NOT COGNIZANT OF THE FACT THAT THE APPELLANT WAS PLACED IN SEG. UNIT, NOR HAD THEY BEEN AWARE OF THE FACT THAT THE APPELLANT HAD NOT BEEN GIVEN HIS MEDICATION DURING THE SIX (6) DAY PERIOD. DR. ROGOL ISSUED ORDERS THAT APPELLANT WILL RECEIVE MEDICATION AT ALL TIMES, REGARDLESS OF HIS LOGISTICS ON THIS COMPOUND.

ARGUMENT

1. THE TRIAL COURT (BEING JON O. NEWMAN, DIST. OF CONN.) ERRED IN NOT ISSUING A SHOW CAUSE ORDER SO THAT THE APPELLANT BEING (PRO SE) COULD PROVE TO THAT HONORABLE COURT THAT HE THE APPELLANT WAS DENIED THE EIGHTH AMENDMENT, AND EVALUATION OF THOSE FACTS AS MADE MENTIONED OF IN HIS PETITIONER WERE TRUE & JUST. AS IN ESTELLE THERE IS NO DOUBT THAT DELIBERATE INDIFFERENCE TO THE THE APPELLANT & OTHER SERIOUS MEDICAL NEEDS OF/PRISONERS VIOLATES THE EIGHTH AMENDMENT. THIS COURT AS WITH JUDGE NEWMAN SHOULD KEEP IN MIND THAT PETITIONER IS ACTING AS PRO SE, AND THE FACT THAT PETITIONER WAS DENIED MEDICATION FOR A SIX DAY/^{PERIOD}DAY DOES WARRANT THE SUM OF \$300,000.00, AS WITH THE PROBLEMS WHICH AROSE WHEN FURLOUGH WAS DENIED PETITIONER BECAUSE OF BEING PLACED IN THE SEG. UNIT.

APPELLANT STRESSES: WITH A SHOW CAUSE HEARING APPELLANT COULD & WOULD PROVE ALL ALLEGATIONS AS TRUE STATEMENTS. APPELLANT QUOTES FROM ESTELLE V. GAMBLE, "BECAUSE THE COMPLAINT WAS DISMISSED FOR FAILURE TO STATE A CLAIM, WE MUST TAKE AS TRUE ITS HANDWRITTEN, PRO SE ALLEGATIONS. COOPER V. PATE, 378 U. S. 546 (1964)." FROM THE SUPREME COURT OF THE UNITED STATES, MR. JUSTICE BLACKMUN CONCURS IN THE JUDGMENT OF THE COURT, JUSTICE MARSHALL IS THE "QUOTE"

2. THE PLAINTIFF ALSO COMPLAINS THAT THE DEFENDANTS HAVE SUBJECTED HIM TO CRUEL AND UNUSUAL PUNISHMENT IN VIOLATION OF THE EIGHTH AMENDMENT, MADE APPLICABLE TO PLAINTIFF WITH ESTELLE V. GAMBLE.....

THE HISTORY OF THE CONSTITUTIONAL PROHIBITION OF "CRUEL AND UNUSUAL PUNISHMENTS" HAS BEEN RECOUNTED AT LENGTH IN OPINIONS OF THE SUPREME COURT AND NEED NOT BE REPEATED NOW. SEE, e.g., GREGG V. GEORGIA, ____ U. S. ____, ____ (1976); SEE ALSO GRANUCCI, NOR CRUEL AND UNUSUAL PUNISHMENT INFLICTED: THE ORIGINAL MEANING, 57 CAL. L. REV. 839 (1969). SEE WILKERSON V. UTAH, 99 U.S. 130, 136 (1878) ("(I)T IS SAFE TO AFFIRM THAT PUNISHMENTS OF TORTURE...& ALL OTHERS IN THE SAME LINE OF UNNECESSARY CRUELTY, ARE FORBIDDEN BY THAT AMEND.

2. IN RE KEMMLER, 136 U. S. 436, 447 (1890) ("PUNISHMENTS ARE CRUEL WHEN THEY INVOLVE TORTURE OR A LINGERING DEATH....")
3. IN MORE RECENT CASES, HOWEVER, THE SUPREME COURT HAS HELD THAT THE AMENDMENT PROSCRIBES MORE THAN PHYSICALLY BARBAROUS PUNISHMENTS. SEE, e. g., GREGG V. GEORGIA, supra, AT ----(PLURALITY OPINION); TROP V. DULLES, 356 U. S. 86, 100-101 (1958); WEEMS V. UNITED STATES, 217 U. S. 349, 373 (1910). THE AMENDMENT EMBODIES "BROAD AND IDEALISTIC CONCEPTS OF DIGNITY, CIVILIZED STANDARDS, HUMANITY, AND DECENCY....," JACKSON V. BISHOP, 404 F. 2d 571, 579 (CA 8 1968), ^{JUSTICE MARSHALL} against WHICH WE MUST EVALUATE PENAL MEASURES. THUS, WE/HAVE HELD REPUGNANT TO THE EIGHTH AMENDMENT PUNISHMENTS WHICH ARE INCOMPATIBLE WITH "THE EVOLVING STANDARDS OF DECENCY THAT MARK THE PROGRESS OF A MATURING SOCIETY," TROP V. DULLES, SUPRA, AT 101; SEE ALSO GREGG V. GEORGIA, SUPRA, AT ----(PLURALITY OPINION); SEE ALSO LOUISIANA ex rel. FRANCIS V. RESWEBER, 329 U. S. 459, 463 (1947); WILKERSON V. UTAH, SUPRA, AT 136.
4. THE BUREAU OF PRISONS ALONG WITH THE GOV'T HAS OBLIGATIONS TO PROVIDE MEDICAL CARE FOR THOSE WHOM IT IS PUNISHING BY INCARCERATION. AN INMATE MUST RELY ON PRISON AUTHORITIES TO TREAT HIS MEDICAL NEEDS; IF THE AUTHORITIES FAIL TO DO SO, THOSE NEEDS WILL NOT BE MET. IN THE WORST CASES, SUCH A FAILURE MAY ACTUALLY PRODUCE PHYSICAL "TORTURE OR A LINGERING DEATH," IN RE KEMMLER, SUPRA, THE EVILS OF MOST IMMEDIATE CONCERN TO THE DRAFTERS OF THE AMENDMENT. IN LESS SERIOUS CASES, DENIAL OF MEDICAL CARE MAY RESULT IN PAIN AND SUFFERING WHICH NO ONE SUGGESTS WOULD SERVE ANY PENOLOGICAL PURPOSE. CF. GREGG V. GEORGIA, SUPRA, AT ----(PLURALITY OPINION). THE INFLECTION OF SUCH UNNECESSARY SUFFERING IS INCONSISTENT WITH CONTEMPORARY STANDARDS OF DECENCY AS MANIFESTED IN MODERN LEGISLATION CODIFYING THE COMMON-LAW VIEW THAT "(i)t IS BUT JUST THAT THE PUBLIC BE REQUIRED TO CARE FOR THE PRISONER, WHO CAN FOR THE PRISONER, WHO CANNOT, BY REASON OF THE DEPRIVATION OF HIS LIBERTY, CARE FOR HIMSELF."

I THEREFORE CONCLUDE THAT DELIBERATE INDIFFERENCE TO SERIOUS MEDICAL NEEDS OF THE APPELLANT CONSTITUTES THE "UNNECESSARY AND WANTON INFLICTION OF PAIN," GREGG V. GEORGIA, SUPRA, AT —, PROSCRIBED BY THE EIGHTH AMENDMENT. THIS IS TRUE WHETHER THE INDIFFERENCE IS MANIFESTED BY PRISON DOCTORS IN THEIR RESPONSE TO THE PRISONER'S NEEDS OR BY PRISON GUARDS IN INTENTIONALLY DENYING OR DELAYING ACCESS TO MEDICAL CARE OR INTENTIONALLY INTERFERING WITH TREATMENT ONCE PRESCRIBED. REGARDLESS OF HOW EVIDENCED, DELIBERATE INDIFFERENCE TO A PRISONER'S SERIOUS ILLNESS OR INJURY STATES A CAUSE OF ACTION.

THIS CONCLUSION DOES NOT MEAN, HOWEVER, THAT EVERY CLAIM BY A PRISONER THAT HE OR SHE HAVE NOT RECEIVED ADEQUATE MEDICAL TREATMENT STATES A VIOLATION OF THE 8TH AMENDMENT. IN LOUISIANA *ex rel. FRANCIS V. RESWEBER*, 329 U. S. 459 (1947), FOR EXAMPLE, THE COURT CONCLUDED THAT IT WAS NOT UNCONSTITUTIONAL TO FORCE A PRISONER TO UNDERGO A SECOND EFFORT TO ELECTROCUTE HIM AFTER A MECHANICAL MALFUNCTION HAD THWARTED THE FIRST ATTEMP. ALSO SEE, PALCO V. CONNECTICUT, 302 U. S. 319, 323, (1937).

AGAIN WE ASK THAT THE WRITTEN PRO SE DOCUMENT IS TO BE LIBERALLY CONSTRUED. AS THE SUPREME COURT UNANIMOUSLY HELD IN HAINES V. KERN, ER, 404 U. S. 519 (1972), A PRO SE COMPLAINT, "HOWEVER INARTFULLY PLEADED," MUST BE HELD TO "LESS STRINGENT STANDARDS THAN FORMAL PLEADINGS DRAFTED BY LAWYERS" AND CAN ONLY BE DISMISSED FOR FAILURE TO STATE A CLAIM IF IT APPEARS "BEYOND DOUBT THAT THE PLAINTIFF CAN PROVE NO SET OF FACTS IN SUPPORT OF HIS CLAIM WHICH WOULD ENTITLE HIM TO RELIEF." *Id.*, AT 520-521, QUOTING *CONLEY V. GIBSON*, 355 U. S. 41, 45-46 (1957).

PLAINTIFF'S COMPLAINTS ARE "BASED SOLELY ON THE INDIFFERENCE AND THE LACK OF PROPER MEDICAL TREATMENT WHICH WAS INADEQUATE TREATMENT DURING HIS SIX (6) DAYS IN "ADMINISTRATIVE SEGREGATION", THIS ALSO IN PART, IS CRUEL AND UNUSUAL PUNISHMENT.

WHEREFORE, PLAINTIFF SEEKS THE SUM OF \$50,000.00 PER DAY WHEN IN "ADMINISTRATIVE SEGREGATION", AND THE SUM OF \$1,000,000.00 FOR LACK OF PROPER MEDICAL AID, OR WHATEVER THIS HONORABLE COURT SHOULD DEEM JUST & PROPER.

ON AUG. 30, 1977 THE APPELLANT FOR THE FIRST TIME SINCE HIS DEC. 76, ^{FURLOUGH} ~~WAS~~ PERMITTED HIS SECOND FURLOUGH. UPON HIS RETURN TO FCI., DANBURY ON SEPT. 3, 1977, THE FOLLOWING TOOK PLACE: I WILL QUOTE FROM THE INCIDENT REPORT ISSUED ON SEP. 3, '77 BY CORRECTIONAL OFFICER MR. JOHN ROWE: "UPON RETURNING FROM FURLOUGH AT 7:30 PM. MR. BATTILORO WAS UNABLE TO PROVIDE THE REQUIRED URINE SAMPLE. BY 10:30 PM. HE STILL HAD NOT PROVIDED A SAMPLE STATING THAT HE DIDN'T UNDERSTAND IT BUT FOR SOME REASON HE JUST COULDN'T. HE ALSO STATED THAT HE KNEW HE WOULD HAVE TO PROVIDE A URINE SAMPLE UPON HIS RETRUN FROM FURLOUGH." LT. A. L. BROWN CORRECTIONAL SUPERVISOR THEN PLACED APPELLANT INTO SEG., UNIT DUE TO THE FACTS WHICH I HAVE QUOTE. ON WED., SEPT. 7, 1977 HIS UNIT EXPUNGED SAID SHOT, WHICH IS ENCLOSED IN THIS PETITION.

DURING THIS PERIOD OF TIME THE INSTITUTION REFUSED AGAIN AS IN THE PAST TO GIVE THE APPELLANT HIS MEDICATION. APPELLANT REQUESTED FROM OFFICER ROWE A STATEMENT STATING SAID FACT, OFFICER ROWE INFORMED APPELLANT THAT HE COULD NOT GIVE THE STATEMENT AS REQUESTED, BUT HE DID ^{& WOULD} MAKE A MENTAL NOTE IF APPELLANT SO WISHED. MR. ROWE ASSURED THE APPELLANT THAT HE WOULD MAKE MENTION OF SAID FACTS IF AN INQUIRY WAS MADE IN REFERENCE TO THE APPELLANT BEING DENIED MEDICATION BY STAFF AFTER APPELLANT REQUESTED SAID MEDICATION.

APPELLANT STATES THAT ABOVE HE MAKES MENTION OF SEG., UNIT WHICH LEANS "ADMINISTRATIVE SEGREGATION". THE EIGHTH AMENDMENT PROVIDES: "NOR CRUEL AND UNUSUAL PUNISHMENTS INFLICTED." ALSO, "DELIBERATE INDIFFERENCE". SEE, e. g., WILLIAMS V. VINCENT, 508 F. 2d 541 (CA2 1974) JONES V. LOCKHART, 484 F. 2d 1192 (CA8 1973) (REFUSAL OF PARAMEDIC TO PROVIDE TREATMENT); SEE, e. g., WILBRON V. HUTTO, 509 F. 2d 621, 622 (CA8 1975); CAMPBELL V. BETO, 460, 460 F. 2d 765 (CA5 1972); MARTINEZ V. MANCUSI, 443 F. 2d 921 (CA2 1970), cert. denied, 401 U. S. 983 (1971); TOLBERT V. EYMAN, 434 F. 2d 625 (CA 1970); EDWARDS V. DUNCAN, 355 F. 2d 993 (CA4 1966).

RESPECTFULLY SUBMITTED,
BY: FRANCIS D. BURRASCANO
RESIDENT OF FCI., DANBURY

THE PLAINTIFF: THE APPELLANT

Jerry Batilloro
JERRY BATILORO, PRO SE
FEDERAL CORRECTIONAL INSTITUTION
DANBURY, CONN.

8/9/77
(DATE)

SWORN BEFORE ME THIS 9 DAY OF

September 1977.

R. Hassen
MR. HASSEN, CASWQOEKWE, FCI.,
DANBURY, CONN.

"Authorized by the Act of July 7, 1956
to administer oaths (18 U.S.C. 4054)."

At a Special Term Part V of the
Supreme Court, County of Kings, held
at the Courthouse at the Civic Center
Brooklyn, New York, on the 23rd day
of March, 1977.

P R E S E N T:

HON. *Albert R. Ransier*
Justice.

----- x
BARBARA BATTILORO,

Plaintiff,

INDEX NO. *4809/77*

- against -

FINDINGS & JUDGMENT

JERRY BATTILORO,

Defendant.
----- x

The plaintiff having brought this action for a judgment
of absolute divorce by reason of the confinement of the defendant
for a period of three or more consecutive years after the marriage
of the plaintiff and the defendant, and the summons bearing the
notation Action for a Divorce and the verified complaint having
been duly served upon the defendant personally without the state
as appears by the affidavit of Gilbert R. Whitlock, Jr., Deputy
Sheriff of Fairfield County, Connecticut, and the defendant not
having appeared within the time prescribed therefor by statute,
and it appearing from testimony given in open court that the de-
fendant is not in the military service of the United States, and

1 B

the plaintiff having applied to the court at a Special Term thereof for judgment for the relief demanded in the complaint and the matter having been set down for trial on the 23 day of March, 1977, and the plaintiff having on that day appeared before me and presented written and oral proof of service and in support of the essential allegations of the complaint, and such proof having been heard and considered by me, I decide and find as follows:

FINDINGS

FIRST: That plaintiff and defendant were both over the age of eighteen (18) when this action was commenced.

SECOND: That for a continuous period of at least two years immediately preceding commencement of this action, plaintiff resided in this state.

THIRD: That plaintiff and defendant were married on March 29, 1967, in Elkton, Maryland.

FOURTH: That there are two children born of this marriage, whose names and date of birth are as follows: STACY, born September 27, 1969, and JASON, born August 27, 1973.

FIFTH: That after the marriage of plaintiff and defendant, defendant was confined in prison for a period of three or more consecutive years, to wit: that defendant was confined in the Federal Correctional Institution, Danbury, Connecticut, on

June 20, 1975, and will remain confined until 1981, and not more than five (5) years elapsed between the date the cause of action arose and the date of commencement of this action.

CONCLUSIONS

FIRST: That jurisdiction as required by Section 230 of the Domestic Relations Law has been obtained.

SECOND: That plaintiff is entitled to judgment of divorce and granting the incidental relief awarded herein.

JUDGMENT

NOW, on motion of JOSEPH L. BELVEDERE, attorney for the plaintiff, it is

Adjudged and Decreed that the marriage between BARBARA BATTILORO, plaintiff, and JERRY BATTILORO, defendant, is dissolved by reason of the confinement of the defendant for a period of three or more consecutive years after the marriage of the plaintiff and the defendant, and it is further

Adjudged and Decreed that plaintiff is awarded custody of the infant issue of the marriage, to wit:

Name

Date of Birth

STACY

September 27, 1969

JASON

August 27, 1973

and it is further

Ordered, Adjudged and Decreed that plaintiff is authorized to resume her prior surname, to wit: ALBANO.

E N T E R (IN KINGS COUNTY)

Albert R. ...
Justice Supreme Court

Anthony N. Durso
Clerk

Entered
March 24, 1977
Anthony N. Durso
Clerk

Filed
1977 Mar 25 PM 1:50
Kings County Clerk

Certification

Nº 14370

STATE OF NEW YORK }
COUNTY OF KINGS, } ss.:

I, ANTHONY N. DURSO, Clerk of the County of Kings and Clerk of the Supreme Court of the State of New York in and for said County (said Court being a Court of Record) DO HEREBY CERTIFY that I have compared the annexed with the original

filed in my office *March 25 1977*
and that the same is a true transcript thereof and of the whole of such original.

In Testimony Whereof, I have hereunder set my hand and affixed the seal of said County and Court, this *27* day of *March* 19 *77*

Pay CASHIER \$ *4B* *Anthony N. Durso* Clerk

Received \$ *4B* *Anthony N. Durso* Comparer

Cashier

BELVEDERE AND BELVEDERE
ATTORNEYS AND COUNSELLORS-AT-LAW
4518 ELEVENTH AVENUE, BROOKLYN, N. Y. 11219

JOSEPH L. BELVEDERE
GERTRUDE E. BELVEDERE

(212) 435-8087
(212) 871-1600
~~(212) 259-9372~~

July 28, 1977

Mr. Jerry Battiloro
% U. S. Correctional Institution
Danbury, Conn. 80870

RE: Battiloro v. Battiloro

Dear Sir:

Enclosed herewith please find a certified copy of the divorce decree which was granted by the Supreme Court, Kings County, on March 23, 1977.

Very truly yours,

Joseph L. Belvedere
JOSEPH L. BELVEDERE

JLB/dm
Enc.

5B

U. S. DEPARTMENT OF JUSTICE
BUREAU OF PRISONS
INCIDENT REPORT

1. NAME OF INSTITUTION

PART I - INCIDENT REPORT

2. NAME OF INMATE	3. REGISTER NUMBER	4. DATE OF INCIDENT	5. TIME
6. PLACE OF INCIDENT	7. ASSIGNMENT	8. QUARTERS	
9. INCIDENT			10. CODE
11. DESCRIPTION OF INCIDENT			
12. SIGNATURE OF REPORTING EMPLOYEE			
13. NAME AND TITLE (PRINTED)			
14. INCIDENT REPORT DELIVERED TO ABOVE INMATE BY		15. DATE INCIDENT REPORT DELIVERED	16. TIME INCIDENT REPORT DELIVERED

PART II - COMMITTEE ACTION

17. COMMENTS OF INMATE TO COMMITTEE REGARDING ABOVE INCIDENT		
18. IT IS THE FINDING OF THE COMMITTEE THAT: ("X" APPLICABLE BOX)		
☐ YOU COMMITTED THE PROHIBITED ACT AS CHARGED	☐ YOU COMMITTED THE FOLLOWING PROHIBITED ACT:	☐ YOU DID NOT COMMIT A PROHIBITED ACT
19. COMMITTEE FINDINGS ARE BASED ON THE FOLLOWING INFORMATION		
20. COMMITTEE ACTION		
21. DATE OF ACTION		
CHAIRMAN	MEMBER	MEMBER

-6B-

ADMINISTRATIVE DETENTION ORDER

Incident Report # 256

Date September 3, 1977

TO : Associate Warden(P)
 FROM : A. J. Brown, Correctional Supervisor
 SUBJECT : Placement of Battiloro, Jerry, Reg. No. 80870-158,
 in Administrative Detention

The above named inmate

- ☒ (a) Is pending a hearing for violation of institution rules or regulations;
- ☐ (b) Is pending an investigation of a violation of institution rules or regulations;
- ☐ (c) Is pending investigation or trial for a criminal act;
- ☐ (d) Is to be admitted to Administrative Detention
 - ☐ (1) Since he or she has requested admission for protection;
 - ☐ (2) Since a serious threat exists to individual's safety as perceived by staff--although person has not requested admission;
- ☐ (e) Is pending transfer or is in holdover status during transfer; or
- ☐ (f) Is pending classification.

It is this officer's decision based on all the circumstances that Battiloro, Jerry's continued presence in the general population poses a (inmate's name) serious threat to life, property, himself, staff, other inmates, or to the security of the institution because He refused to submit to a urine sample test upon his return from a furlough which is outline in policy statement 7300-44 date June 3, 1977. His refusal was after a two hours waiting period which was allowed for him to urinate.

Therefore, Battiloro, Jerry, Reg. No. 80870-158, is to be placed in Administrative Detention until further notice.

cc: Inmate Concerned ✓
 Chief Correctional Supervisor
 Unit Manager/Central File
 Control Unit
 Correctional Supervisor Log

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